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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

GEREZGIHER, YEMANE M

ART UNIT PAPER NUMBER

2144

DATE MAILED: 04/05/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary

Application No.

09/635,823

Applicant(s)

STAVELEY ET AL.

Examiner

Yemane M Gerezgiher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-11, 13, 14 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-11, 13, 14 and 16-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Amendment A, received on 01/14/2004 has been entered. Accordingly claims 5, 12 and 15 are cancelled and new claims 18-23 are added. Claims 1-4, 6-11, 13, 14 and 17-23 are pending in this application.

Response to Arguments

2. Applicant's arguments with respect to claim 9 and 18 have been considered but are moot in view of the new ground(s) of rejection. However, applicant's arguments in regards to claim 1, is not persuasive.

As per claim 1, the applicant argues that **Burgess did not teach *transmitting collected data in a plurality of data chunks or smaller files rather than large files that may overwhelm the resources of a central site...*** (See Page 12, 1st Paragraph on Remarks/Arguments). Burgess disclosed a monitoring tool sending the collected configuration information of a monitored network device (See Column 2, Lines 26-30) *"...configuration data is then sent over the computer network to a second computer coupled to the computer network. The configuration is logged to a configuration database using the second computer"*. However, when data is transmitted from a source to a destination, standard packetization (breaking data file in to multiple data chunks (packets or cells)) must be performed. The packets (*data chunks*) are then assembled at the destination to form a document or data file. The applicant further argues that, **"*the use of data chunks is chosen rather than packets ...*"** (See Column

Page 11, Line 2). However, unlike ATM packets/cells with a fixed size, TCP/IP defines a packet size and data chunks are indeed packets of some defined size. Thus, Burgess inherently disclosed splitting data in to small chunks or packetization process during the process of transmitting the configuration data from one node to the second node in the network.

Thus, the rejection to the originally presented claim 1 was proper and remains proper rejection to the currently amended claim 1.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16, depends on a cancelled claim 15 and recites "said web server" (See Claim 16, Claim Line 1), which lacks antecedent basis. No web server has been previously defined in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgess et al (U.S. Patent Number 5,758,071) hereinafter referred to as Burgess.

As per claims 1, Burgess disclosed a method and system for monitoring the configuration of a network device connected to the network. Where the first network device having a monitoring tool and tracking agents *data collector(s) module(s)* (col. 3, lines 47-55 and Fig. 1) obtaining the configuration/status (col. 4, lines 30-40) data, where the configuration data comprised information about the first network device of computer network and where monitoring tool and tracking agents of the first network device collected the configuration information and transmitted back to the monitoring tool running in the first device (col. 3, line 47 through col. 4, line 29 and col. 4, lines 45-53) and where the monitoring tool transmitted ("uploaded") the configuration information to a second computer connected to the network where the second computer is a primary site (*central site*) receiving the transmitted configuration data of the network device and loading the configuration data in to a database (ABSTRACT, col. 2, lines 39-45, Figs. 5 and 10 and col.9, lines 57-67). Although Burgess was silent regarding *splitting data file to chunks of data for transmitting from a node to another node in the network and transmitting the packets (small chunks of data) separately to the central site and recombining the packets to recreate the data at the central site* was inherently disclosed, because parsing or splitting data in to size-limited packets, transmitting the packets and merging the packets at the destination site must be performed when

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transmitting a configuration or device status or other information from one network device to another network device. Burgess disclosed a step of accessing a database stored at the primary central location (claim 2). See col. 2, lines 36-50.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-4, 6-11, 13, 14 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al (U.S. Patent Number 5,758,071) in view of Putzolu et al (U.S. Patent Number 6,681,243)

As per claims 9 and 18, Burgess disclosed a method and system for monitoring the configuration of a network device connected to the network. Where the first network device having a monitoring tool and tracking agents *data collector(s) module(s)* (col. 3, lines 47-55 and Fig. 1) obtaining the configuration/status (col. 4, lines 30-40) data, where the configuration data comprised information about the first network device of computer network and where monitoring tool and tracking agents of the first network device collected the configuration information and transmitted back to the monitoring tool running in the first device (col. 3, line 47 through col. 4, line 29 and col. 4, lines 45-53) and where the monitoring tool transmitted ("uploaded") the configuration information

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to a second computer connected to the network where the second computer is a primary site (*central site*) receiving the transmitted configuration data of the network device and loading the configuration data in to a database (ABSTRACT, col. 2, lines 39-45, Figs. 5 and 10 and col.9, lines 57-67). Burgess disclosed a step of accessing a database stored at the primary central location (claims 14). See col. 2, lines 36-50. Burgess transmitted collected data from a monitored computer in the network to another remotely located central device in the network and since TCP/IP defines a variable packet or a data chunk size, it is inherently disclosed that a configuration file must have been defined a size of the packets transmitted (claim 6). Burgess further disclosed remotely monitoring the execution of collectors/agents that run on the network devices to be monitored (claims 8 and 10) (Fig. 4). As per claim 13, Burgess disclosed a display/graphical interface at the network device for viewing data (col. 4, lines 54-66). Burgess disclosed remotely monitoring the execution of collectors/agents that run on the network devices to be monitored (claims 8 and 10) (Fig. 4).

With respect to the claim rejection applied above, Burgess substantially disclosed the invention as claimed. However, Burgess did not clearly teach *a monitoring application accessing a configuration file to determine which of the network devices to monitor and which data collector modules to run on which ones of the target devices.*

An artisan working with Burgess's invention would have been motivated to look for teachings that may have allowed accessing a configuration file for determination of which probing modules to run on which connected network devices. In these arts Putzolu disclosed accessing a configuration file and determining the network device to

be monitored and determining which data collecting module to be run on the associated network device. See Column 12, Line 49 through Column 13, Line 3.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Putzolu related to *accessing a configuration file to determine which of the data collector modules to run on which devices* and have modified the teachings of Burgess related monitoring network devices in order to "provide security, in that rogue objects (e.g., rogue agents) can not harm the device or network ... allowing for modules to access restricted resources, may allow for controlled access to resources". See Column 12, Lines 27-37.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the already combined teachings of Burgess et al (U.S. Patent Number 5,758,071) and Putzolu et al (U.S. Patent Number 6,681,243) as applied to claim 9 above and further in view of Kullick et al (U.S. Patent Number 5,732,275) hereinafter referred to as Kullick.

With respect to the claim rejection applied to claim 9 above, the combined teachings of Burgess and Putzolu substantially disclosed the invention as claimed. However, both did not teach *monitoring tool/application communicating with the central site to determine if newer releases of the monitoring tool or application or the data collectors exist, and if so downloading the newer releases from the central site.*

An artisan who was aware of the combined teachings of Burgess and Putzolu, at the time the applicant's invention was made would have been motivated to look for teachings that may have allowed to automatically update a monitoring tool with a newer

monitoring tool avoiding a human interaction with the system in order to update the monitoring software and to automatically update a monitoring tool with a newer monitoring tool avoiding a human interaction with the system in order to update the monitoring software. In these arts Kullick taught a software module determining whether a newer version of the application program was available at the central location and based on the determination if a newer application tool or software was detected the software module automatically downloaded updating the older version with a newer version of the software application. See ABSTRACT and patent claims 7 and 24.

Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to take the teachings of Kullick related to a method and apparatus for managing and automatically updating software program by selecting available newer version of the same program stored in the central site and have modified the already combined teachings of Burgess and Putzolu related to monitoring network devices connected to the network, because such a modification would "permit a software program running on a computer to be automatically updated with a newer version in a completely automated fashion, without requiring external access to the computer, and in a manner that is completely transparent to the user of the computer. " See col. 2, lines 33-37.

10. Claims 3, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess et al (U.S. Patent Number 5,758,071) as applied to claims 1 and 2 above

and in view of Kullick et al (U.S. Patent Number 5,732,275) hereinafter referred to as Kullick.

With respect to the claim rejection applied above, Burgess substantially disclosed the invention as claimed. However, Burgess did not expressly teach *using a browser to send request for information to the central site, and at the central site to use a command query to retrieve information from a database and sending the retrieved information back to the web browser through the internet and monitoring tool/application communicating with the central site to determine is newer releases of the monitoring tool or application or the data collectors exist, and if so downloading the newer releases from the central site.*

Examiner takes Official Notice (see MPEP § 2144.03) that " using a browser to send request for information to the central site, and at the central site to use a command inquiry to retrieve information from a database and sending the retrieved information back to the web browser formatted in a report form through the internet " in a computer networking environment and mainly in a client server environment where a client using a web browser sends a request to a remote server to retrieve desired information and where a command inquiry is generated and query is performed at the remote server to retrieve information from a database associated with the server and sending the retrieved information to the requesting client at a client network via the Internet was very well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03. However, MPEP § 2144.03 further states "See also In re Boon, 439 F.2d 724, 169

USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Ahlert, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

An artisan working with Burgess system at the time the applicant's invention was made would have been motivated to look for teachings that may have allowed to automatically update a monitoring tool with a newer monitoring tool avoiding a human interaction with the system in order to update the monitoring software and to automatically update a monitoring tool with a newer monitoring tool avoiding a human interaction with the system in order to update the monitoring software. In these arts Kullick taught a software module determining whether a newer version of the application program was available at the central location and based on the determination if a newer application tool or software was detected the software module automatically downloaded updating the older version with a newer version of the software application. See ABSTRACT and patent claims 7 and 24.

Thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to take the commonly known teachings (using a web browser to send request to a site and retrieve information from a database in the site and send the retrieved data back to the user interface or web browser formatted in a report form) and further to take the teachings of Kullick related to a method and apparatus for managing and automatically updating software program by selecting available newer version of the same program stored in the central site and have modified Burgess related to monitoring network devices connected to the network, because such a modification would "permit a software program running on a computer to be automatically updated with a newer version in a completely automated fashion, without requiring external access to the computer, and in a manner that is completely transparent to the user of the computer. " See col. 2, lines 33-37.

11. Claims 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlener et al (U.S. Patent Number 6,182,157) in view of Putzolu et al (U.S. Patent Number 6,681,243) hereinafter referred to as Putzolu and further in view of Rangaraian et al (U.S. Patent Number 5,828,830) hereinafter referred to as Rangaraian.

As per claim 18, Schlener disclosed *starting a data collection tool, retrieving a configuration file with the data collection tool and running one or more data collectors on the network devices* (See Management Station executing a management tool in Figure 1), *were the data collectors were collecting different sets of information* (See Figure one where an agent collecting configuration information related to a PC workstation, another

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agent running on a server collecting different set of configuration information and yet another agent collecting configuration status associated with a router) *for corresponding network device* which have been monitored and *transmitting* the collected information from the 3 monitored network devices to the monitoring station. See Figure 1, Column 1, Lines 8-55; Column 2, Line 49 through Column 3, Line 65.

Schlener substantially disclosed the invention as claimed, but failed to teach *identifying a set of the network devices to be monitored using the configuration file comprising a listing of the data collectors to be run on the identified devices and obtaining a list of remote hosts names from a name server and filtering the list of remote hosts name by applying a filter rules.*

An artisan working with Schemer's invention would have been motivated to look for teachings that may have allowed accessing a configuration file for determination of which probing modules to run on which connected network devices and *obtaining a list of remote hosts names from a name server and filtering the list of remote hosts name by applying a filter rules.* In these arts Putzolu disclosed accessing a configuration file and determining the network device to be monitored and determining which data collecting module to be run on the associated network device (see Column 12, Line 49 through Column 13, Line 3), but did not clearly teach *obtaining a list of remote hosts names from a name server and filtering the list of remote hosts name by applying a filter rules.* However, Rangaraian disclosed a configuration file having a list of host names

obtained from a DNS and applying a filter rule. See Figure 5, Column 7, Lines 24-34 and Column 6, Lines 54-67.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Putzolu related to *accessing a configuration file to determine which of the data collector modules to run on which devices* and Rangaraian related to obtaining host names from a name server by applying a filter mechanism and have modified the teachings of Schlener related monitoring network devices, because Rangaraian's teaching would be used to reduce the number of agents that are processed while monitoring targeted devices and in order to "provide security, in that rogue objects (e.g., rogue agents) can not harm the device or network ... allowing for modules to access restricted resources, may allow for controlled access to resources". See Putzolu Column 12, Lines 27-37.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

a. Rochford, Suzanne L. et al. (U.S. Patent Number 6,654,803) Entitled:

Multi-panel route monitoring graphical user interface, system and method

b. Cowan, Daniel Edward et al. (U.S. Patent Number 6,115,743) Entitled:

Interface system for integrated monitoring and management of network devices in a telecommunication network

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- c. Barker, James E et al. (U.S. Patent Number 6,052,819) Entitled: *System and method for detecting correcting and discarding corrupted data packets in a cable data delivery system*
- d. Rakoshitz, Gregory et al. (U.S. Patent Number 6,578,077) Entitled: *Traffic monitoring tool for bandwidth management*
- e. Meyer, Barry D. et al. (U.S. Patent Number 6,289,378) Entitled: *Web browser remote computer management system*
- f. Solymar, Gaber et al. (U.S. Patent Number 6,244,758) Entitled: *Apparatus and method for monitoring electronic devices via a global network*
- g. Bullard, William Carter Carroll et al. (U.S. Patent Number 6,405,251) Entitled: *Enhancement of network accounting records*
- h. Garg, Atul R. et al. (U.S. Patent Number 6,327,677) Entitled: *Method and apparatus for monitoring a network environment*
- i. Fletcher, Rick et al. (U.S. Patent Number 6,108,782) Entitled: *Distributed remote monitoring (dRMON) for networks*
- j. Reisacher, Olivier Michel (U.S. Patent Number 5,978,845) Entitled: *Network management relay mechanism*
- k. Scholl, Thomas H. et al. (U.S. Patent Number 5,742,762) Entitled: *Network management gateway*

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Non-Patent Document

I. Baldi et al., "*Exploiting code mobility in decentralized and flexible network management*", In Proceedings of the 1st International Workshop on Mobile Agents, Berlin, Germany. April 1997.

13. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Yemane Gerezgiher whose telephone number is 703-305-4874. The examiner can normally be reached on Monday- Friday from 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's supervisor, Harvey Jack B, can be reached at (703) 305-9705.

Yemane Gerezgiher
AU 2144


JACK B. HARVEY
SUPERVISORY PATENT EXAMINER